



# **WICASA Pimpri Chinchwad Branch of WIRC of ICAI**

**Students E-Newsletter November - 2018**

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## MANAGING COMMITTEE MEMBERS

- ◆ CA. Amod Bhate (Chairman)
- ◆ CA. Yuvraj Taware (Vice - Chairman & WICASA Chairman)
- ◆ CA. Prajakta Chincholkar (Secretary & Treasurer)
- ◆ CA. Ravindra Nerlikar (Immediate Past Chairman)
- ◆ CA. Suhas Gardi (Past Chairman)
- ◆ CA. Santosh Sancheti (MCM)
- ◆ CA. Sachin Bansal (MCM)
- ◆ CA. Anil Agarwal (MCM)

## WICASA COMMITTEE MEMBERS

- ◆ CA. Yuvraj Taware (Vice - Chairman & WICASA Chairman)
- ◆ Miss. Rucha Kulkarni (Vice Chairperson)
- ◆ Mr. Omkar Dangale (Secretary)
- ◆ Miss. Riddhi Pandey (Treasurer)
- ◆ Mr. Rohit Kadu (MCM)
- ◆ Mr. Omkar Dhamane (MCM)

## WICASA Chairman's Communication

My Dear Students,

Heartiest Best Wishes on the festive occasion of Deepawali. May the Festival of light dissipate darkness and illuminate all aspect of your life.

Those of you who have taken November 2018 exams must be in mood to relax. I understand that you would not like to miss blithesome time to enjoy and recreate. I am quite hopeful that you all will shimmer with resounding success. I most of time hear student complaining about holding CA exams in November and not able to enjoy festive of Deepawali. But my dear students this is your testing period. Small sacrifices make big victories. Once you become CA, your happiness and changed life will compensate all your sacrificed fun.

### **Keep the momentum of learning**

I sincerely believe that you all must have put in your best to crack your respective examination. Although your exams have over, you should continue with your study. Devote at least 2 hours daily for studies. This will sound troublesome to you... But my dear students, because life is quite unpredictable, you need to be prepared for any situation in life and then only you will be able to enjoy every bit of it. Being a professional course you must remember that each day is crucial and should not be wasted.

### **Cultivate the habit of reading**

One habit can really help you in life is habit of reading. Apart from reading institute's study material and practice manual, you should read students journal, other publication of Institute and newspaper. Your reading should not be restricted up to reading for exams. You should also read for enriching your life, thoughts and developing your thinking process. This is right time for all of you to develop positive thinking. You should silence your thoughts of lack of limitation and replace them with thoughts of unlimited possibility. "You are today where your thoughts have brought you; you will be tomorrow where your thought takes you." There are many quality books available written by great personalities. Reading those books will give you opportunity to understand those great personalities very deeply and they can guide you to follow right path in your life. Those books will act as your friend, philosopher and guide to shape your life which is very important.

### **Update yourself**

Our branch is organizing Student Conference in December 2018. It is earnest wish that you should attend this event in greater number as this is very refreshing and invigorating and infuse fresh energy in you. You will have rare opportunity of closely interacting with subject experts and acquire contemporary knowledge. The benefit of such close interaction with the professionals and your colleagues is something that transcends anything that your normal experience can provide.

Wish you all the luck!!!

With Warm Professional Regards,

CA. Yuvraj D Taware

(Chairman, WICASA PimpriChinchwad Branch)

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## Sec 185 & 186 of Company Act 2013

One of the most significant legal reforms of the country in recent times has been the enactment of the Companies Act, 2013 (the 2013 Act) as this was a major step towards aligning Indian company law with the company laws prevalent globally.

Today, we shall discuss the important highlights of Sec 185 & 186 which is a trending topic in the corporate world.

So let's make an attempt to understand this.

### ***What does this section says and Why this section?***

**Section 185:-** This primarily deals with the subject of person to whom company cannot give loan.

**Section 186:-** This section enlists the exceptions and specifies the limits up to which a company can give loan.

So, as per Sec 185(1), **no** company i.e. it includes all companies, shall

Advance any Loan,

Or Give Guarantee

Or Provide Security.

TO

- Director
  - Relative of Director
  - Director of Holding Company
  - Relative of Director of Holding Company
  - Partner of Director
  - Firm in which director/relative is a partner
-

The said lists of persons/firms are specifically excluded and no company can advance any loan, or give guarantee or provide security to them.

The intent of the rigidity of Section 185 of the 2013 Act was to ensure that directors do not surpass their fiduciary duty towards the company for personal benefit.

Hence, not only Directors are covered, it covers all the persons related to director in the negative list. Here, when we conduct audit, we need to check, whether any loan is advanced to any Director and the same is shown as O/s bal in S. Debtors to tally the B/s.

Here, please make a note that, As per Exemption notification issued on 05<sup>th</sup> June, 2015 Section 185 shall not applicable on Private Limited Companies, if it fulfils the conditions mentioned therein

- In whose share capital no body corporate has invested any money
- If the borrowing of such company is less than twice of its paid up share capital **or** Rs. 50 Cr whichever is **lower**.
- Such a company has no default in repayment of such borrowings.

Also, Sec 185 shall not be applicable on Govt Co. in case it obtains approval from the concerned Ministry.

This is very important, here to note that, the complete sec 185 shall be exempt for Pvt Ltd & Govt Co given the conditions are satisfied.

As these notifications were issued prior to amendment act 2017, Validity of this notification was questionable. But as per the experts, the said notification is valid even after amendment.

The section is applicable only at the time of granting the loan and any change in circumstances thereafter will not make the section applicable.

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**EXAMPLE 1**

Company A has two Directors Mr. X and Mr. Y. Both holds 50% share each of Company.

Company A wish to give loan to following and have asked for your views on same.

S No	Loan To	Whether Co Can	Reason
1	Loan to Director X.	NO	<b>Included in definition</b>
2	Loan to a relative of Director Y.	NO	<b>Do</b>
3	Director of company D which is the holding company of A.	NO	<b>Do</b>
4	A partner of Director of Holding Company.	YES	<b>A partner of Director of Holding co is not included.</b>
5	A partner of Director of company A.	NO	<b>Included in definition</b>
6	To a firm in which Mr. X is a partner.	NO	<b>Included in definition</b>
7	To a firm in which relative of Mr. Y is a Partner.	NO	<b>Included in definition</b>
8	A partner of relative of Director X	Yes	<b>Partner of Relative of Director is not included.</b>

As per Sec 185(2), NO company may advance loan, guarantee or security to

- Any PRIVATE Limited company in which such director is a Director or member.
- Body corporate in which such Director or Directors hold more than 25% shares.

- Body Corporate, MD, BOD or manager accustomed to act in accordance with direction of board or Director of lending company.
- Note - A body corporate does not include a co-operative society. But it includes a foreign company.

Unless the following conditions are satisfied:-

After passing Special Resolution in General Meeting of company

& the loan should be utilized by borrowing company for its principal business activities.

Also an explanatory statement to the notice of GM needs to be given with specified disclosures.

#### EXAMPLE 2 (PRIVATE LTD CO WITH COMMON DIRECTOR)

Particulars	Company A (Pvt Ltd or Ltd)	Company B (Pvt Ltd)
Directors Cum share holder	A (shareholding 60.0%) B (shareholding 40.0%)	B (Shareholding 75.%) D (Shareholding 25%)
Only Share Holder	Nil	Nil

A and B are Husband and wife. D is their Son.

Company B wish to avail loan from Company A, Whether Possible?

#### SOLUTION 2

B is a Common Director, and borrower is Pvt Ltd > so loan can be given if SR is passed & loan should be used by Company B for its principal business activities.



**EXAMPLE 3 (Private Ltd Co To Public Ltd Co)**

Directors Cum share holder	A (shareholding 60.0%) B (shareholding 20.0%) C (Shareholding 15.0%)	B (Shareholding 10.0% ) A (Shareholding 10.0% ) C (Shareholding 5.0%)
Only Share Holder	D (Shareholding 15.0%)	Others (75.0%)

Company B wish to avail loan from Company A, Whether Possible?

**SOLUTION 3**

No it is not possible to advance loan to company B as Director A, B and C collectively are holding 25% of shares of Company

**PLANNING**

Either Mr A or Mr B or Mr C should resign from the post of Director of Company A. This would bring down the holding of shares to less than 25% and will enable the borrowing between two Companies.

**OR**

3) Either Mr A or Mr B OrMr C should give up at least 1% of their share held in Company B to bring down the holding under 25%.

Sec 185(3), this specifically states the list to whom this section does not apply.

i.e. public company can give loan without complying any additional formalities

- Loan to managing OR whole-time director (MD/WTD)
  - As a part of service extended to all of its employee.
  - Any Scheme Approved by members by special resolution.
- OR
- Given in ordinary Course of Business
- OR
- Loan by Holding Co. to its wholly owned subsidiary Co. or any guarantee/security.
- OR
- Guarantee given or security provided by Holding Co., to its subsidiary Co, w.r.t. loan given by third party.

Example:-

- Advance to director for purchase of raw material- is it a loan? no
- Sale of flat on credit to director– is it a loan? No as per case law-(Fredie Ardeshir Mehta V/s Union of India)
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With respect to penalty U/s 185, penalty is levied on 3 people.

- One is the company – who advances loan/G/S – fine min of 5 Lakhs upto Rs. 25 Lakhs
- Officer of Lending company – Imprisonment extendable upto 6 months or fine min 5 Lakhs upto Rs. 25 Lakhs
- Person who accepts loan/G/S – Imprisonment extendable upto 6 months or fine min 5 Lakhs upto Rs. 25 Lakhs

### Jumping onto Section 186

As per Sec 186(1) , a Company shall make investment through not more than **two layers** of investment companies.

Except where

- A Company acquires any Company which is incorporated outside India. Such Company has Investment Subsidiary beyond Two layers as per the law of such country.
- A subsidiary Company from having any investment subsidiary for the purpose of meeting of the requirement under any law framed under any law for the time being in force. (So far, there is no Act/Section that requires any prescribed number of layers)

For the purposes of section 186(1) the following will be counted as “investments” : –

- Subscription or purchase of shares;
- Subscription or purchase of share warrants;
- Subscription or purchase of debentures bonds or similar debt securities.

The following will not be counted as investments : –

- Making of loans or advances
- Any other financial transactions such as lease, purchase of receivables, or other credit facilities.

'Layer' in relation to a holding Company means its subsidiary or subsidiaries [explanation (d) of Section 2(87) of the Act]

'Investment Company' means a Company whose principal business is the acquisition of shares, debentures or other securities”

***Purpose of Sec 186(1)?***

So that Govt can trace the source of funds to check the authenticity of the transaction, as multiple layers can lead to a big escape.

***According to the provisions of sec-186(2)***

No company shall give any loan, guarantee,

OR

provide any security

OR

make any investment in the securities of any other body corporate,

exceeding-

60% of its Paid-up Share Capital + Free reserves + Securities Premium Account;

OR

100% of its Free reserves + Securities Premium Account;

***Whichever is more.***

Also, as per General Circular, Sec 186 is not applicable on Loan given to employees of companies.

Hence, loan/advances given to employees are not governed by sec 186 (i.e. employees other than to MD/WTD who are governed by sec 185)

The Board of directors of the company can give loan, guarantee, or provide security and make investment within the limits specified u/s 186(2),

by passing a **board resolution** at the meeting of Board of Directors of the company.

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**Approval from Members (Sec-186(3)):-**

A Company can give loan, guarantee or provide any security or make any investment beyond the limits specified u/s 186(2), subject to prior approval of members by a **Special resolution** passed at a general meeting.

Disclosure Requirement (Sec- 186(4) full particulars in Financial Statements of Loans Given, Investment made or guarantee given or security provided & its purpose

**Sec- 186(5) :- Unanimous Board Resolution**

Board Resolution with the consent of **all the directors present at the meeting** i.e. Unanimous resolution is required *and*

the prior approval of the public financial institution concerned *where*

any term loan is subsisting is required before sanctioning of Loan. Prior approval of a Public Financial Institutions is required **only if**

The aggregate amount of loan or guarantee given, security provided or investment made exceeds the limits specified u/s 186(2).

**OR**

in case of any default in repayment/payment of loan instalments &/or interest thereon.

Rate of Interest (Sec-186(7)):- shall not be lower than the prevailing yield of one year, three year, five year or ten year Govt. Security closest to the tenor of the loan.

**No Loan by Defaulter Company (Sec-186(8)):-**

A company, who has committed any default in repayment of any deposits accepted before or after the commencement of this Act or in payment of interest thereon, shall not give any loan or give any guarantee or provide any security or make an investments till such default is subsisting.

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**Register of Loan (Sec- 186(9) & (10)):-**

According to the provisions of sec – 186(9),

shall keep and maintain a register, in Form MBP 2,

which shall contain particulars of loan or guarantee given or security provided or investment made, (either manually or in electronic form)

shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose, at registered office of the company.

Non Applicability of provisions of Sec-186(except Sub-Section 1) in the following cases:-

a) Where any loan, guarantee has been given or any security provided or investment made in the ordinary course of its business by-

- A banking co., or
- An insurance co., or
- A housing finance co.,
- A Co. engaged in the business of financing of companies or of providing infrastructural facilities;

b) To any acquisition –

- made by a non-banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and whose principal business is acquisition of securities:  
Provided that exemption to non-banking financial company shall be in respect of its investment and lending activities;
- made by a company whose principal business is the acquisition of securities;
- Of shares allotted in pursuance of clause (a) of sub-section (1) of sec 62.

Compiled By,

**Ms. Simran Virdhi.**

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**FORTHCOMING EVENTS IN MONTH OF DECEMBER 2018**

SR NO	DATE	Topics	Venue	Speaker
1	22.12.18 & 23.12.2018	Student Conference	ICAI Bhawan Pimpri- Chinchwad Branch of WIRC of ICAI	CA. Jyoti Diwane
2	28.12.2018	Seminar On Proceeding & Notice U/S 148	ICAI Bhawan Pimpri- Chinchwad Branch of WIRC of ICAI	CA. Kishor Phadke
3	29.12.18	Seminar on Taxation & Securities U/S 112A	ICAI Bhawan Pimpri- Chinchwad Branch of WIRC of ICAI	CA Milind Phadke
4	30.12.18	Cultural Events	ICAI Bhawan Pimpri- Chinchwad Branch of WIRC	NA

**EVENTS IN THE MONTH OF NOVEMBER 2018**

SR NO	DATE	Topics	Venue	Speaker
1	25.11.18	How to face CA CPT Exam?	ICAI Bhawan Pimpri-Chinchwad Branch of WIRC of ICAI	CA. Jyoti Diwane
2	27.11.18	"WORKSHOP ON GST ANNUAL RETURNS"	ICAI Bhawan Pimpri-Chinchwad Branch of WIRC of ICAI	CA. Govind Chomal
3	28.11.2018	"WORKSHOP ON GST AUDIT"	ICAI Bhawan Pimpri-Chinchwad Branch of WIRC of ICAI	CA. Vaishali Kharade

## Events Snapshot



**How to face CA CPT Exam?**



**WORKSHOP ON GST ANNUAL RETURNS**



## Events Snapshot

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**WORKSHOP ON GST AUDIT**

## Editorial Board

**CA. Amod Bhate**  
Chairman

**CA. Yuvraj Taware**  
WICASA Chairman

**Mr. Omkar Dangale**  
WICASA Secretary

### WICASA PIMPRI CHINCHWAD BRANCH OF WIRC OF ICAI

ICAI Bhawan Plot No. 17/8 A, at Nigdi, Dattanagar, Near Bhakti Shakti chowk, Dehuroad  
Cantonment Board, Behind Indian Oil Petrol Pump, Pune 411044.

Contact No: 8237119977

Email:- [pimpri.chinchwad@icai.org](mailto:pimpri.chinchwad@icai.org), [pimpriicai@gmail.com](mailto:pimpriicai@gmail.com)

Website:-<http://pimprichinchwad-icai.org/>

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- Please contribute to Students Newsletter in the forms of Articles, Compilations or any other useful information.

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